Nonproliferation in a Noncompliant World: Rethinking UN Security Council Resolution 1540
- Summary of a Civil Society Workshop -

On October 29, 2015, the Henry L. Stimson Center hosted "Nonproliferation in a Noncompliant World: Rethinking UN Security Council Resolution 1540," a workshop cosponsored with the Washington Foreign Law Society in cooperation with South Africa-based Institute for Security Studies (ISS) as part of the launch of the ISS-coordinated *Towards the 2016 Comprehensive Review: Former Experts Assess UNSC Resolution 1540*, a report that recommends better practices to combat proliferation. The event brought UNSC Resolution 1540 specialists together with approximately 40 members of civil society, from think-tank professionals to lawyers to university students, to assess the challenges associated with Resolution 1540 as part of outreach in support of the 2016 Comprehensive Review.

A panel of Resolution 1540 specialists shared their perspectives which can be accessed at http://www.stimson.org/events/nonproliferation-in-a-noncompliant-world-rethinking-un-security-council-resolution-1540/. Moderated by the Stimson Center's Debra Decker, the panel included Terence Taylor, Coordinator of the Group of Experts supporting the UN Security Council 1540 Committee; Nicolas Kasprzyk, former UN 1540 Committee Expert and now a consultant in the Transnational Threats and International Crime Division with the Institute for Security Studies in South Africa; and Esther Zubiri, the Spanish State Attorney Chief on counter-terrorism and non-proliferation matters who leads the UNSCR 1540 implementation program at the Organization of American States' Inter-American Committee against Terrorism.

Following the panel, the participants self-selected themselves into one of five groups to discuss a specific issue area based on background information that had been previously distributed to registered participants. The panelists and other 1540 specialists, including US State Department Special Coordinator of UN Security Council Resolution 1540 Richard Cupitt, helped facilitate the roundtable discussions. The outcome of each group's response to its respective issue areas is provided below.[i]

Group 1/2: Committee Assistance and Capacity-Building Mechanisms

Group 1 and 2 combined to address their questions. They noted that States do not always receive the appropriate help. States must first recognize that they need assistance and then identify what specific assistance they need; however, with so many 1540 requirements, States need more help in determining the priority areas for implementation based on risk and then apply to this their own domestic priorities. Such a systematic process could also then help to have assistance prioritized. Support then must be better coordinated among the States needing assistance and the States providing assistance.

One way to better coordinate support could include providing a venue for States to communicate more directly with each other. Regional conferences that link States together to collaborate on issues are beneficial, as is the existing website. That said, the website needs to be updated so that States can view examples of similar problems and ways to address them. For example, one state with specific questions about legislation/regulations should be able to visit the website and see how other States have addressed similar issues. Accessing the website perhaps could then reduce the need for States to seek additional outside assistance.

Group 3: Incentivizing States

There is no shortage or lack of interest and intent in complying with 1540 requirements; however, the complexity of the 1540 matrix causes issues. With over 300 cells in the matrix, Group 3 noted it is a complicated process to complete. It might be beneficial to explore allowing States to complete the matrix with qualitative assessments.

To incentivize compliance:
- The link between security and development issues needs to be highlighted as appropriate for each State.
- The 1540 Committee should explore the practice of peer review, as the Croatian-Poland exercise proved very successful.
- A glossary should be developed to define common terms and provide background information. This was strongly recommended.

Group 3 recognized that 'naming and shaming' techniques are not conducive to better implementation, as they can lead to diplomatic disputes.

Group 4: Measuring Implementation and the 1540 Matrix

Group 4 concluded that the matrices must be able to capture the different levels of compliance; they must able to track progress by comparing past, present, and future matrices. The development of National Action Plans and measures of accomplishments related to those plans will be more important than simply refreshing/updating the matrices.

Participants also found that regular international conferences are a useful method for gaining information. Such conferences spur compliance amongst States by providing a time-based element for implementation, i.e., to have accomplishments by the conference date. In addition, Group 4 found that NGOs and universities can play a large role by helping States with legislation, i.e., providing experts to States and developing legislation templates.

A member of Group 4 challenged the idea that having a large number of categories in the 1540 matrix is necessarily more difficult, but that it may actually be helpful because it provides more specific guidance to States.

Group 5: Legal Issues

Group 5 participants stated that there are a myriad of problems with nonproliferation laws and regulations that hinder business compliance and the ability to criminally prosecute. First and foremost, many of the problems with prosecutions arise because of the labyrinth of export compliance laws and the difficulty in defining let alone controlling dual-use items. Some dual-use items such as a commodity, software or technology with primarily academic or business uses are not inherently harmful but may become regulated because of where they are going or how they are being used. Businesses are confused and may fail to comply with export controls even though noncompliance may result in fines and criminal charges to the business.

Successful prosecutions are also difficult to achieve due to the financial costs of prosecuting and due to the need for prosecutorial expertise. State authorities must have expansive knowledge across an overwhelming list of dual-use items. The large amount of dual-use items also makes it difficult for governments to choose what to focus on – and how much States will be able to focus on single-use items, which are likely already well defined and regulated. Finally, States must model legislation to mirror that of other States; without the same language, extradition will be difficult - and prosecution often cannot commence without extradition.

When dealing with States that are reluctant to prosecute, the 1540 Committee could facilitate prosecution through international funds and UN support, while also combining the expertise of the Group of Experts in order to avoid having to have someone in each State trained for these types of specialized prosecutions.

The Group further recommended exploring a broader litigation approach that can leverage civil litigation systems. An export fine may not affect a business, but a civil system with "a more muscular-style plaintiff's bar" could help incentivize compliance with controls. The Group reported, "With terrorism you have $40 billion worth of judgments that American lawyers can go out and execute on, which scares companies. If you can scare companies by putting the risk quotient in there…if you can link that civil liability penalty into/in addition to what you are doing criminally, you might have a chance because in proving civil liability you don't have to prove the intent..."

Group 6: New and Future Challenges

Participants in this group discussed many current and pending future proliferation challenges and possible approaches to each.

3-D printing is a new challenge, and States must seek to understand what can be done with this technology. Nefarious actors can circumvent customs and border protections designed to inhibit WMD technology proliferation by sending critical design information over the dark web and then printing the requisite components or subcomponents. To combat this issue, monitoring

purchases and transfers of industrial printers can help, as can identifying printer cartridge materials needed to print WMD components.

Synthetic biology and DNA/RNA manipulation is another new challenge that can cause catastrophic events, and occur with little to no warning. Novel organisms can circumvent the current detection and control schemas through minor alterations. Thus, it is necessary that there are more robust "sniffers" and databases, as well as enhanced training for detection and controls.

Group 6 also discussed types of proliferators and end users. For example, the Islamic State has access to national resources and national capabilities and seeks intellectual capital that it can exploit. There is need to identify where the intellectual capacity exists, and find out who is buying the requisite materials required to make a WMD. To do this, it is necessary to identify and inventory skill sets and monitor those with know-how. Synchronizing intelligence agencies and local law enforcement to detect, dissuade, deter, and hold accountable those participating in proliferation is vital.

Insider threats are another issue. It is necessary to identify those who, under the guise of legitimate activities (i.e. grad students, security personnel, and maintenance workers) are working with corrupted motivations. Human reliability programs must be made more robust and expanded beyond the nuclear area.

Another new challenge is that of digital system penetration. This includes attacking information and bio-safety protocols, as well as the lab itself, such as in the Stuxnet attack in Iran. Solutions to these types of challenges include educating personnel, mandating certifications to work on systems, and enhancing cyber hygiene for dual-use systems.

The financial area is also a challenge with the rise of Bitcoin and other uncontrolled transfers. Cooperative intelligence work is needed to penetrate and map financial networks and cooperative activities among WMD aspirants, proliferators and violent extremist organizations. Bureaucratic stovepipes must be broken down between government/military/civilian efforts. Better linkages are needed between 1540 activities and other ongoing UN activities to to optimize actions/resources. The Group recommended aggressive monitoring of technology development in this arena and the eradication of Bitcoin usage.

Group 6 also noted that mass refugee movements could overwhelm or circumvent nominal border/customs processes for smuggling. Of particular concern is that refugees could be used as human incubators for pathogens. The Group noted the need for a rapid reaction to identify global displacement hot-spots and then to train the affected personnel on WMD non-proliferation best practices – before a catastrophic event.

Areas for further research included drones and consequence management. On drones: how will the unregulated space used by drones enable or facilitate proliferation activities, and how can 1540 activities be enhanced by drone technologies? On consequence management: if non-proliferation and counter proliferation fail, it will be imperative to possess resilient systems. Having highly resilient systems/processes will also act as a deterrent since criminals will not be able to fully meet their objectives – thus this falls within the realm of non/counter proliferation. How can best practices and benchmarking from mature non-proliferation participants be transferred to less developed ones?

These are just a few of the many issues and questions the 1540 Committee needs to consider as proliferation challenges evolve.

This Report has been prepared by Stimson Center interns Rose Morrissy and Joseph Coye under the direction of Stimson Center's Managing Across Boundaries Senior Advisor Debra Decker.

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[i] The summaries are based on the Groups' workshop reports and on some participants' reports submitted to Stimson in more detail after the workshop discussions.